

KANSAS STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND TITLE SERVICES
REPORT OF COMPLAINT
FILED AGAINST
UNIFIED SCHOOL DISTRICT #202, TURNER PUBLIC SCHOOLS
ON NOVEMBER 25, 2024
DATE OF REPORT: DECEMBER 18, 2024

This report is in response to a complaint filed with the Kansas State Department of Education against USD #202 (Turner Public Schools) on behalf of ----- by -----, advocate for the mother, ----- . In the remainder of the report, ----- will be referred to as “the student”, ----- will be referred to as “the parent” or as “the mother”. ----- will be referred to as “the advocate” or the “complainant”.

The complaint is against USD #202 (Turner Public Schools). In the remainder of the report, USD #202 will be referred to as “the district.” The student currently attends the Sixth Grade Academy which will be referred to as the “sixth grade building” in the remainder of the report. During the 2023-2024 school year the student attended 5th grade at Midland Trail Elementary School also in the Turner School District, which will be referred to as “ the elementary school” in the remainder of the report. Prior to the 2023-2024 school year the student attended an elementary school in USD #500 which will be referred to as a “nearby district”. Ashley Pieper is the student’s IEP case manager and will be referred to as the “IEP case manager” in the remainder of the report. Brandon Porter was the school psychologist at Midland Trail Elementary school and will be referred to as the “school psychologist”. Matthew Kennedy is the principal at the Sixth Grade Academy and will be referred to as the “sixth grade building principal”. University of Kansas Health System is the hospital the student was admitted to and will be referred to as the “hospital” in the remainder of the report. PACES is the community mental health organization from whom the student receives counseling and will be referred to as the “community mental health provider”.

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a complaint from the date in which it was filed. A complaint is considered filed on the date in which it was received by KSDE. In this case, the KSDE initially received the complaint on November 25, 2024.

Evidence Reviewed

USD #202 made the following staff available for interviews on December 11 and 12, 2024 as part of this investigation. These staff will be referred to as follows in the remainder of this report:

- Cristina Compton is the Director of Special Services for the district and will be referred to as the “director”.

- Julie Metz is the Special Services Coordinator for the district and will be referred to as the “coordinator”.
- Angie Candelario is the Social Worker and will be referred to as the “social worker”.

During the investigation, the Complaint Investigator, Nikki Crawford, reviewed all evidence and documentation provided by the district, advocate and the mother. Additionally, the complaint investigator contacted the district and parents on November 25, 26, 27, 30, December 3, 5, 6, 9, 10, 11, 12, and 13 and 2024 by phone and email to clarify evidence and documentation.

In completing this investigation, the complaint investigator reviewed documentation provided by the complainant and district. Although additional documentation was provided and reviewed, the following materials were used as the basis of the findings and conclusions of the investigation:

1. Annotated 2023-2024 district calendar noting dates of assessment activities and student attendance during the special education evaluation period
2. Student attendance record dated August 17, 2023-May 21, 2024
3. The social worker’s Certificate of Completion dated August 25, 2023 for the Child and Adolescent Functional Assessment Scale (CAFAS) training
4. District contact log dated November 21, 2023 to December 5, 2024
5. Behavior Detail Report dated November 27, 2023, including a description of the Due Process Hearing decision
6. Email from advocate to special education coordinator requesting a special education evaluation including a functional behavioral assessment (FBA), dated November 28, 2023
7. Email from special education coordinator to advocate clarifying that the school has been implementing general education supports and willing to meet with the mother, dated December 4, 2023
8. Email from advocate to special education coordinator and building principal clarifying that the evaluation should be expedited dated December 4, 2023
9. Email from special education coordinator to advocate confirming the request for an expedited evaluation, dated December 5, 2023
10. PWN for initial special education evaluation dated December 6, 2023, signed by the mother on December 12, 2023 and received by district on December 14, 2023
11. Email from the coordinator on December 6, 2023 to the advocate and mother to get the PWN for evaluation signed
12. Email from the coordinator on December 7, 2023 that the PWN and Parent Rights would be sent the following day in the sibling’s backpack
13. Email from the advocate to the coordinator with an attached photo of the signed PWN dated December 12, 2023
14. Email dated December 13, 2023 from the coordinator to the mother and advocate

15. Email dated December 19, 2023 from the coordinator to the mother requesting any additional information related to a diagnosis of anxiety, depression or trauma
16. Email dated December 20, 2023 sent to the coordinator listing the student's current diagnoses found in the student's medical record
17. January 12, 2024 email from coordinator to the mother and advocate requesting the student come to school for the special education evaluation
18. Email from coordinator to mother on January 19, 2024 requesting the student come to the sixth grade building on January 22-26, 2024 to complete the initial evaluation
19. FBA observation data collection sheets and summary from January 29 to February 23, 2024
20. Email from the advocate to the coordinator dated January 29, 2024 requesting specifics about the special education evaluation
21. Email from advocate to coordinator on January 30, 2024 requesting the list of tests used in the evaluation
22. Email on February 8, 2024 from advocate to coordinator requesting the results of the student's evaluation
23. PWN declining dates offered for meeting due to staff schedules, dated March 4, 2024
24. Notice of Meeting dated March 8, 2024, proposing meeting on March 21, 2024 to review the evaluation and determine eligibility as well as develop the Individual Education Program (IEP)
25. Evaluation Report dated March 21, 2024
26. Initial IEP dated March 21, 2024
27. IEP meeting minutes dated March 21, 2024
28. PWN for special education services dated March 21, 2024
29. Behavior Detail Report April 29, 2024
30. Notice of Meeting dated May 6, 2024 for May 10th meeting to address mother's concerns
31. IEP team meeting agenda dated May 10, 2024
32. IEP team meeting minutes dated May 10, 2024
33. School-wide Behavior Intervention Plan (BIP) discussed at the May 10, 2024 meeting
34. Student class schedule included in the May 10, 2024 meeting materials
35. Contact log dated May 10, 2024 reflecting district staff facilitating intake process with PACES
36. Email from the advocate to the IEP team sent on May 16, 2024
37. Student attendance record dated August 19, 2024-December 6, 2024
38. Behavior Detail Report dated September 3, 2024
39. Behavior Detail Report dated September 6, 2024
40. PWN dated September 20, 2024 for FBA at sixth grade building, signed by the mother on December 2 and received by the district on December 4, 2024
41. Phone call between the investigator, mother and advocate on November 25, 2024

42. Phone call between the investigator and the director on December 2, 2024
43. District's response to the allegations dated December 3, 2024
44. Phone call between the investigator and the director on December 6, 2024
45. Notice of Meeting signed December 6, 2024 for December 12, 2024 meeting to discuss recent behavioral incident
46. District interview on December 11, 2024 with the coordinator and director
47. District interview on December 12, 2024 with the social worker and director
48. Email from advocate to the investigator on December 12, 2024
49. Email reply from investigator to advocate and mother on December 13, 2024

Background Information

The subject of this complaint is an 11 year old girl enrolled in the 6th grade at the sixth grade building during the 2024-2025 school year. She lives with her mother and younger siblings, one of whom receives special education services at the elementary school and the other an infant who has had serious health challenges since birth.

According to the most current evaluation narrative dated March 21, 2024, the student achieved her developmental milestones and did not participate in early intervention services. Prior to enrollment in the sixth grade building, she attended pre kindergarten through 4th grade in a nearby district and entered 5th grade at an elementary school in the current district.

According to the most recent evaluation conducted in the spring of 2024, the student's qualifying exceptionality is a specific learning disability in math and she also qualifies for social work services. Additionally, the student was hospitalized November 21-24, 2024 for threats of self harm following an altercation at school with her grandfather. While in the hospital the student was diagnosed with Major Depressive Disorder (MDD), recurrent episode, moderate (HCC), anxiety, suicidal ideation, grief, trauma and stressor-related disorder, attention deficit, and aggressive behavior.

Issues Investigated

Based on the written complaint and an interview with the complainant, two issues were identified and investigated.

Issue One

Did USD #202 conduct a complete, comprehensive Functional Behavioral Assessment to develop the student's Behavior Intervention Plan during the last 12 months?

Applicable Law

K.A.R. 91-40-8. Evaluations. (c) As a part of an initial evaluation, if appropriate, and as a part of any reevaluation, each agency shall ensure that members of an appropriate IEP team for the

child and other qualified professionals, as appropriate, comply with the following requirements: (1) The evaluation team shall review existing evaluation data on the child, including the following information: (A) Evaluations and information provided by the parent of the child; (B) current classroom-based, local, and state assessments and classroom-based observations; and (C) observations by teachers and related services providers.

K.A.R. 91-40-9. Evaluation procedures, (a)(3) A variety of assessment tools and strategies shall be used to gather relevant functional and developmental information about the child, including information provided by the parent, (5) If an assessment is not conducted under standard conditions, a description of the extent to which the assessment varied from standard conditions shall be included in the evaluation report.

A district must ensure the child is observed in the child's learning environment (including the regular education classroom setting) to document the child's academic performance and behavior in the areas of difficulty (K.A.R. 91-40-11(c); 34 C.F.R. 300.310).

Parent Position

The advocate and parent report that USD #202 did not complete a comprehensive FBA as requested on November 28, 2023, in order to develop a BIP.

Analysis: Findings of Fact

The following finding of facts is based upon a review of the documentation noted previously and interviews with both parties.

1. According to district records, the student was involved in a serious physical altercation on the bus with another student, November 17, 2023 resulting in a Due Process Hearing on November 27, 2023 and out-of-school suspension (OSS) from her elementary school for the remainder of the first semester and from district transportation for the remainder of the school year. Beginning the second semester, the student was assigned to a new placement, the district's sixth grade building where the student would be in a general education In-School Suspension (ISS) room for a shortened day until reevaluated at conferences and if doing well, return to her elementary school prior to 4th quarter.
2. Emails shared by the advocate note that on November 28, 2023 she sent the coordinator an email requesting a special education evaluation, including a FBA. District records reflect that on November 30, 2024 the coordinator responded to the advocate requesting that the mother complete a release of information (ROI) to communicate and share information regarding the student. The coordinator also acknowledged the request for an initial evaluation, sharing that a request must be made by a parent or guardian in writing or verbally and that she would be happy to speak with the mother.
3. The advocate provided a copy of an email from special education coordinator to advocate confirming the request for an expedited evaluation dated December 5, 2023.
4. Advocate provided a copy of an email sent to the coordinator on December 5, 2023 stating that the mother finds the district communication related to the student's needs

difficult to understand. The email also shares concern that the student is failing two classes with written documentation of educational interventions currently being used as well as given access to a calm down area and yet the child has not yet been identified through Child Find by the district. The email also restates the need for an expedited evaluation due to the student's current OSS placement.

5. The district response notes that on December 6, 2023, the director and coordinator went to the student's home to attempt to speak with the parent and obtain PWN to begin an initial evaluation. There was no response from the parent. On the same date, the advocate emailed to request that the PWN be sent home in the sibling's backpack.
6. The advocate provided a copy of an email from the coordinator on December 6, 2023 to the advocate and mother to get the PWN for evaluation signed. The email was sent to an outdated address for the mother.
7. The advocate provided a copy of an email from the coordinator on December 7, 2023 that the PWN and Parent Rights would be sent the following day in the sibling's backpack.
8. The district response stated that on December 8, 2023, the Parent Rights and PWN for an initial evaluation were sent home in the sibling's backpack as requested.
9. The advocate provided a copy of an email from the advocate to the coordinator with an attached photo of the signed PWN dated December 12, 2023.
10. The advocate provided a copy of an email dated December 13, 2023 from the coordinator to the mother and advocate that there was missing information in the PWN and that she will send it back home in the sibling's backpack. This email was sent to an outdated address for the mother.
11. The district response states that the PWN signed by the parent was received by the district on December 14, 2023.
12. The district response shares that the team initiated the evaluation with a record review of existing data on December 18, 2023.
13. The advocate shared an email dated December 19, 2023 from the coordinator to the mother requesting any additional information related to a diagnosis of anxiety, depression or trauma. This email was sent to an old email for the mother.
14. The advocate shared an email dated December 20, 2023 sent to the coordinator listing the student's current diagnoses found in the student's medical record.
15. The advocate shared in the November 26, 2024 interview that the mother did not have transportation in order to take the student to school at the alternative placement beginning January 8, 2024, which is nearly a mile from the student's home.
16. During the district interview on December 12, 2024 staff shared that the mother chose not to send her daughter to the alternative placement beginning January 8, 2024 and that the district provided special transportation for the student during the evaluation period.
17. January 12, 2024, the district contact log reflects an email sent from the coordinator to arrange specialized transportation for the purpose of the special education evaluation. It is noted that according to evidence provided by the advocate, this email went to an outdated address for the mother.

18. January 16, 2024: District snow day.
19. As noted in the district's response, the coordinator called and emailed the mother on January 19, 2024 to notify her that transportation to the sixth grade building would be canceled the following week since the mother had not responded to emails. The coordinator also requested that the student attend school January 29–February 2, 2024 with the district providing transportation for the purpose of evaluation. It is noted that according to evidence provided by the advocate, this email went to an outdated address for the mother.
20. The in-school portion of the evaluation did not begin until January 29, 2024 due to the student's lack of attendance, according to the district's response.
21. During the district interview on December 12, 2024, staff shared that the primary sources of data for the FBA included observations, interviews, record reviews and completion of the CAFAS.
22. The district shared 17 FBA observation data collection sheets from the ISS classroom in the sixth grade building which occurred between January 29 and February 23, 2024. The targeted behaviors listed on the FBA data collection sheets include: Non-compliance/refusal, off task behaviors, disruption, inappropriate language, throwing objects, hitting, kicking, inappropriate voice volume, and verbal aggression. During the classroom observations there were no target behaviors observed. The social worker, school psychologist and special education teacher conducted the observations. The district attendance record shows that the student was present for 11 of the 17 days of FBA observation data collection.
23. It is noted in the evaluation report dated March 21, 2024 that these FBA observations took place in the sixth grade building in a general education ISS room, rather than the student's home classroom in the elementary school due to the student's change in placement as a result of the November 27, 2023 Due Process Hearing.
24. According to staff in the December 11, 2024 district interview, during the observation period there were anywhere from 2-5 students in the room as it is used as a "recovery room" for students who need a small setting in which to gain behavioral self-control.
25. In addition to the FBA observations, district staff shared in the December 12, 2024 interview that past discipline records and student attendance records were reviewed as well as information gathered in a background history interview with the mother. The student, IEP case manager and teachers from the student's elementary school were also interviewed. The record review also included information from the student's elementary school where she attended pre kindergarten through 4th grade in a nearby district.
26. During the district interview on December 11, 2024, staff shared that the CAFAS was completed by the district's social work department head who is a clinical licensed social worker. to complete the CAFAS. The district shared documentation that the social worker completed CAFAS training August 25, 2023. In an interview with the social worker on December 12, 2024 she shared that the team chose to use the CAFAS because it examines domains that were relevant for the student's challenging behaviors. She also reported that the CAFAS is sensitive to high intensity, low frequency behaviors which are the types of behaviors the student has typically struggled with.

27. According to the district response, the special education evaluation was completed on February 23, 2024.
28. According to the district response, the Eligibility Determination and IEP meeting was held at the elementary school on March 21, 2024. The team agreed the student met the criteria for a Specific Learning Disability in the area of math, however due to the lack of target behaviors during the FBA observations the team was unable to identify a hypothesis upon which to create a BIP. In the IEP, the baseline notes explosive behaviors such as yelling, refusing to follow directions, using profanity and assaulting others, but does not include rates of these behaviors. The team did agree to include a social work goal to increase appropriate conflict management skills with peers. Related services include 15 minutes extracurricular special education transportation, 2x daily and 20 minutes social work services in the special education setting, 1x week. The team determined it would be appropriate to address previous behaviors through a school-wide positive behavior support plan when the student returned to school.
29. According to the district interview on December 11, 2024 the team held a meeting on March 25, 2024 to discuss ways to help the student transition easily back into her elementary school; the mother and advocate were in attendance. The team strategized ways to help the student connect with the school community and better manage her behaviors. The student returned to school on March 27, 2024.
30. According to the district response, on May 10, 2024 the IEP team met to discuss parent concerns and update the school-wide positive behavior support plan. The team also discussed the option of conducting another FBA this school year, but with only seven school days left, decided it would be most appropriate to request Prior Written Notice and conduct a new FBA in the fall when school resumed.
31. According to the district contact log, on May 10, 2024 district staff facilitated the student's intake process with PACES in order to get additional social emotional support.
32. According to the district response and the contact logs, since August 16, 2024, the district has sent emails or made phone calls eight times in an attempt to get a signed PWN for an FBA.
33. The signed PWN for the FBA was received by the district on December 4, 2024.

Conclusion

In this case, the advocate requested, on behalf of the mother, a special education evaluation including a FBA in response to the student's Due Process Hearing decision which resulted in OSS from her elementary school for the remainder of the first semester and from district transportation for the remainder of the school year.

The FBA portion of the initial special education evaluation consisted of interviews, record reviews, classroom observations and the CAFAS. Ideally, the FBA observations which help to determine a hypothesis for the challenging behaviors, would have been conducted in the school environment in which the problematic behaviors occurred. However, due to the results of the Due Process Hearing on November 27, 2023, the student was assigned to an alternative setting in the ISS room at the sixth grade building for the 3rd quarter of the 2023-2024 school year. The district noted the change in FBA observation location in the evaluation, as required.

The district provided the student transportation to school during the special education evaluation period as the mother chose not to send her daughter to this alternative setting in part, due to the lack of family transportation.

Observational data was collected over the 11 days the student was in attendance as evidenced by the FBA data collection sheets from January 29 to February 23, 2024, during this time there were no instances of the target behaviors. The IEP team agreed to implement a school-wide behavior intervention plan based on the interviews, record review and CAFAS data to support the student to be successful in spite of the lack of observational data. The district met its obligation for a comprehensive social emotional assessment, including a FBA. The district has made ongoing efforts to get consent to conduct another FBA as the student's behaviors continue to need addressing.

An additional consideration for this issue is that the special education laws and regulations do not define the term "Functional Behavioral Assessment." In short, a FBA has no required elements. Thus, even if the FBA was somehow conducted in an unsatisfactory manner (which is not substantiated in this complaint), there cannot be a violation of special education laws or regulations as a result.

Based on the foregoing, USD #202 did conduct a complete, comprehensive FBA and *dis IN compliance with IDEA regulations*.

Issue Two

Did USD #202 conduct an expedited Functional Behavioral Assessment for the student during the past 12 months?

Applicable Law

34 C.F.R.300.534 (d)(2)(i) "If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under § 300.530, the evaluation must be conducted in an expedited manner".

Parent Position

The advocate and parent report that USD #202 did not complete the FBA in an expedited manner upon receiving consent on December 14, 2023.

Analysis: Findings of Fact

The following finding of facts is based upon a review of the documentation noted previously and interviews with both parties. The findings of Issue One are incorporated herein by reference.

1. The district shared an annotated 2023-2024 school calendar that reflects during the evaluation period of December 14, 2023 to February 23, 2024 when the evaluation was completed, there were 35 school days, only 11 of which the student was in attendance.
2. The district's winter break was December 21, 2023 – January 8, 2024.

3. According to the director interviewed on December 11, 2024 the Due Process Hearing findings stated that the student could begin attending the sixth grade building for shortened days on January 8, 2024.
4. The district response states that on January 8, 2024, there was a parent meeting with the sixth grade building principal and director of administrative services to discuss ISS placement at the sixth grade building as a result of the November 27, 2024 Due Process Hearing.
5. January 9, 2024: District snow day.
6. January 12, 2024: District snow day. The district contact log reflects an email sent from the coordinator to arrange specialized transportation for the purpose of the special education evaluation. It is noted that according to evidence provided by the advocate, this email went to an outdated address for the mother.
7. January 16, 2024: District snow day.
8. As noted in the district's response, the coordinator called and emailed the mother on January 19, 2024 to notify her that transportation to the sixth grade building would be canceled the following week since the mother had not responded to emails. The coordinator also requested that the student attend school January 29–February 2, 2024 with the district providing transportation for the purpose of evaluation. It is noted that according to evidence provided by the advocate, this email went to an outdated address for the mother.
9. January 22, 2024: District snow day.
10. Noted in the district response is an email sent by the mother to the coordinator on January 24, 2024 confirming the student would attend the sixth grade building January 29–February 9, 2024 for evaluation purposes.
11. According to the district response, the student was called in sick on February 1, and had unexcused absences on February 2, 6, and 8, 2024.
12. The district timeline reflects that February 12-14, 2024 the evaluation and transportation were extended due to student's absences.
13. The district attendance log reflects that the student had an unexcused absence on February 13, 2024.
14. The district timeline reflects that February 20-23, 2024 the evaluation and transportation were again extended due to student absences.
15. The district attendance log reflects that the student had an unexcused absence on February 20, 2024.
16. According to the district contact log, the coordinator notified the mother on February 23, 2024 that the team had completed gathering initial evaluation information and that specialized transportation would no longer be provided for purposes of the evaluation. She informed the mother that the team would contact her to schedule an eligibility determination meeting.
17. According to the district timeline the Notice of Meeting and Parent Rights were sent home with the younger sibling, as requested by the parent on March 7, 2024.

18. According to the district response, the Eligibility Determination and IEP meeting was held at the elementary school on March 21, 2024.

Conclusion

IDEA requires that districts complete a special education evaluation and initiate services within 60 school days of receiving parental consent. The regulations also state that when a student is subject to disciplinary measures during the evaluation period the evaluation should be expedited.

In this case, the district received consent for the special education evaluation on December 14, 2023 and held the Eligibility Determination and IEP meeting on March 21, 2024, which is within 46 school days. Although IDEA does not offer a definition of "expedited", 46 school days is reasonable, particularly given the number of days the student missed school during the evaluation period.

Based on the foregoing, USD #202 did conduct an expedited FBA and is found to be *IN compliance with IDEA regulations*.

Summary of Conclusions/Corrective Action

1. **ISSUE ONE:** A violation of K.A.R. 91-40-8(c)(1)(A-C); K.A.R. 91-40-9 (a)(3)(5); (K.A.R. 91-40-11(c); and 34 C.F.R. 300.310) was not found based on the completion of a comprehensive FBA as part of the initial special education evaluation. Corrective action is not required.
2. **ISSUE TWO:** A violation of 34 C.F.R.300.534 (d)(2)(i) was not found based on the Eligibility Determination and IEP meeting, including a FBA within 46 days of receiving parent consent. Corrective action is not required.

Right to Appeal

Either party may appeal the findings or conclusions in this report by filing a written notice of appeal with the State Commissioner of Education, ATTN: Special Education and Title Services, Landon State Office Building, 900 SW Jackson Street, Suite 620, Topeka, KS 66612-1212. The notice of appeal may also be filed by email to formalcomplaints@ksde.org The notice of appeal must be delivered within 10 calendar days from the date of this report.

For further description of the appeals process, see Kansas Administrative Regulations 91-40-51(f).

K.A.R. 91-40-51(f) Appeals.

(1) Any agency or complainant may appeal any of the findings or conclusions of a compliance report prepared by the special education section of the department by filing a written notice of appeal with the state commissioner of education. Each notice shall be filed within 10 days from the date of the report. Each notice shall provide a detailed statement of the basis for alleging that the report is incorrect.

Upon receiving an appeal, an appeal committee of at least three department of education members shall be appointed by the commissioner to review the report and to consider the information provided by the local education agency, the complainant, or others. The appeal process, including any hearing conducted by the appeal committee, shall be completed within 15 days from the date of receipt of the notice of appeal, and a decision shall be rendered within five days after the appeal process is completed unless the appeal committee determines that exceptional circumstances exist with respect to the particular complaint. In this event, the decision shall be rendered as soon as possible by the appeal committee.

(2) If an appeal committee affirms a compliance report that requires corrective action by an agency, that agency shall initiate the required corrective action immediately. If, after five days, no required corrective action has been initiated, the agency shall be notified of the action that will be taken to assure compliance as determined by the department. This action may include any of the following:

- (A) The issuance of an accreditation deficiency advisement;
- (B) the withholding of state or federal funds otherwise available to the agency;
- (C) the award of monetary reimbursement to the complainant; or
- (D) any combination of the actions specified in paragraph (f)(2)